UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 22 2004

REPLY TO THE ATTENTION OF: WC-15J

CERTIFIED MAIL 7001 0320 0006 1450 2098
RETURN RECEIPT REQUESTED

Mr. Nico Niessen
Milco Dairy, LLC
(b) (6)
[redacted]

Subject: Milco Dairy, LLC
Order Pursuant to 33 U.S.C. Sections 1318(a) and 1319(a)
Docket No. V-W-04-AO-17

Dear Mr. Niessen:

Enclosed is the above referenced Order and Request for Information. Compliance with the terms of this Order is required within the time periods specified in the Order. Failure to comply with the Order may subject Milco Dairy to further enforcement action pursuant to Section 309 of the Clean Water Act (CWA). The Order includes a Request for Information pursuant to Section 308 of the CWA contained in Attachment A.

Please send your written responses to the addresses specified in the Order. This Order requires you to immediately cease all unauthorized discharges and construct necessary facilities to comply with the Clean Water Act. This Order also requires you to develop and implement best management practices for your concentrated animal feeding operation and to respond to the Request for Information regarding your relationship or association with Vreba-Hoff Dairy Development.

Please be advised that neither the issuance of this Order by the U.S. EPA nor compliance with its terms affects Milco Dairy's ongoing obligation to comply with the CWA or any other Federal or State law or regulation, nor does it preclude further enforcement action pursuant to 33 U.S.C. § 1319 for the violations cited herein or any other violations committed by Milco Dairy.

Also enclosed is a copy of the Concentrated Animal Feeding Operation Inspection Report conducted by this Agency on December 10, 2003. If you have any questions concerning this matter, please contact Ms. Cheryl Burdett of my staff at (312)886-1463.

Sincerely yours,

Sally K Swanson

for Jo Lynn Traub
Director, Water Division

Enclosures

cc: Angie Lee, IDEM (w/encl.)
Cecilia Conway, Vreba-Hoff Dairy Development (w/encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**DOCKET NO. V-W-04-AO- 17**
	)	
Milco Dairy, LLC	)	
(b) (6) [redacted]	)	**FINDINGS OF VIOLATION AND**
	)	
	)	**ORDER FOR COMPLIANCE**
	)	
	)	**AND**
	)	
	)	**REQUEST FOR INFORMATION**

The following **FINDINGS** are made and **ORDER** issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) under Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. §1319(a). The Administrator has delegated this authority to the Regional Administrator of U.S. EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, U.S. EPA, Region 5, who hereby issues this Findings and Order.

FINDINGS

1. The Subject of this matter is Milco Dairy, LLC (the Dairy) with operations located at (b) (6) [redacted]

2. The Dairy is a person as defined at Section 502(5) of the CWA, 33 U.S.C.§ 1362.

3. The Dairy was constructed by Vreba-Hoff Dairy Development, LLC, according to information obtained from the U.S. EPA contractor, Science Application International Corporation (SAIC), who conducted an inspection on December 10, 2003 along with Randy Jones, Indiana Department of Environmental Management (IDEM). The construction of the Dairy started in November of 1999 and was completed in October of 2002.

4. Section 402 of the CWA, 33 U.S.C. §1342, establishes the National Pollutant Discharge Elimination System (NPDES) program. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342 (b), the Administrator of the U.S. EPA, on January 1, 1975, approved a program whereby the State of Indiana, through the Indiana Stream Pollution Control Board, was authorized to issue and administer NPDES permits as set fourth in the CWA and in the Memorandum of Agreement between U.S. EPA and the Indiana Stream Pollution Control Board dated July 22, 1977. This program is currently administered by IDEM.

5. Pursuant to 40 CFR §122.23, a dairy is a large Concentrated Animal Feeding Operation (CAFO) if it meets the following criteria:

(a) animals have been, are, or will be stabled, confined, and fed or maintained for a total of 45 days or more in any 12 month period,

(b) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility, and

(c) 700 or more mature dairy cattle (whether milked or dry cows) are maintained at the site.

6. Pursuant to 40 CFR § 122.22(g)(1), for Operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an NPDES permit as of April 14, 2003, and comply with all applicable NPDES requirements.

7. The NPDES program established under the CWA regulates the discharge of pollutants from point sources to waters of the United States.

8. Pursuant to 40 CFR § 122.23(a), CAFOs are point sources that require NPDES permits

for discharges or potential discharges.

9. The Dairy is subject to Effluent Limitation Guidelines at 40 CFR Part 412.

10. Pursuant to 40 CFR § 412.31(a), CAFO production areas must not discharge any manure, litter, or process wastewater pollutants into the waters of the United States, except when: (1) precipitation causes the overflow of manure, litter, or process wastewater, (2) such overflow is from a production area that is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from the 25-year, 24-hour rainfall event, and (3) the production area is operated in accordance with the additional measures and records required by 40 CFR § 412.37 (a) and (b).

11. Pursuant to 40 CFR § 122.26(b)(14), discharges of storm water from construction activity, including clearing, grading, and excavation that disturb five acres or more, are discharges of storm water associated with industrial activity.

12. Pursuant to 40 CFR § 122.26(b)(15), after March 10, 2003, storm water discharge associated with small construction activity means discharges of storm water from construction activity, including clearing, grading, and excavation that disturbs between one and less than five acres.

13. Pursuant to 40 CFR § 122.41(j), NPDES Permittees are required to maintain records demonstrating compliance with NPDES permit requirements for a period of three years.

14. Pursuant to 40 CFR § 122.21(a), any person who discharges or proposes to discharge pollutants to waters of the United States is required to apply for an NPDES permit.

15. Pursuant to 40 CFR § 122.23(d)(1), all CAFO owners or operators must apply for a permit, except as provided in 40 CFR § 122.23(d)(2).

16. The Dairy has applied for and obtained a NPDES permit from IDEM for its CAFO Operation. The permit number is ING806068 and it became effective on September 25, 2003.

17. On June 14, 2001 and on several other dates through May 22, 2003, IDEM conducted inspections at the Dairy during construction and post construction and identified the following violations and/or deficiencies:

    a. The slopes of both lagoons need to be stabilized to prevent erosion, which could lead to an overflow.

    b. The silage storage area and the stockpiled feed waste were showing signs of leaching.

    c. The entire production area needs vegetation and stabilization to prevent contamination of storm water.

    d. Improper freeboard was being maintained on both lagoons, as a result overflows were occurring. The lagoons need to maintain at least 24" of freeboard.

    e. Markers are needed in the lagoons to make sure that at least 24" of freeboard is maintained at all times.

    f. The Dairy does not have proper storage for its silage, up to and including, the 25-year, 24-hour storm.

18. During the December 10, 2003 inspection, Mr. Nico Niessen, the Dairy owner, confirmed that the Dairy has 1,200 mature dairy cattle.

19. On December 10, 2003, the U.S. EPA and IDEM conducted an inspection and identified the following violations and/or deficiencies:

    a. Parts of the inner lagoon berm were weedy and eroded around the point where the

tanker fill pipe was used.

b. Manure was piled in the doorway on the east end of the dry cow barn, which has the potential to discharge into the waters of the United States.

c. The silage leachate runoff continues to discharge into a pond that lacks capacity to contain process wastewater in the event of a 25-year/24-hour storm.

d. Several areas of grass to the east and north of the silage storage pad had turned brown due to runoff from the pad. Also, during the U.S. EPA inspection, inspectors observed evidence of the runoff from the silage storage pad in the form of a pond of a dark brown process wastewater, that was approximately 125 feet by 40 feet in area. These areas were northeast of the silage storage pad and close to a drainageway that leads off-site.

e. Vegetation has not been maintained in between the buildings at the facility. Storm water can become contaminated with manure because there is no containment around the door in the passageway between barns. This passageway door area contains manure and silage. Leachate observed in the grass has turned parts of the grass dark brown. The production area had ruts throughout the site and is lacking vegetation.

f. The outfall from the silage tank overflows into a field. This field is near a drainageway that leads off-site. During the inspection, the silage tank overflows were discharging into the field.

g. The Dairy owner stated that he did not have the required Storm Water Pollution Prevention Plan.

20. The drainageway at the Dairy leads to Flat Rock River, which continues on to the East

Fork River, which leads into the White River, and eventually into the Wabash River, a navigable river.

ORDER FOR COMPLIANCE

BASED ON THE FOREGOING FINDINGS and the authority vested in the undersigned Director, Water Division, Region 5, IT IS HEREBY ORDERED:

1. The Dairy shall immediately cease and desist all unauthorized discharges.

2. Within five (5) days of receipt of this Order, the Dairy shall submit certification that it intends to comply with this Order.

3. Within thirty (30) days of receipt of this Order, the Dairy shall provide a response to the Request for Information (Attachment A).

4. The Dairy shall design and construct containment for process wastewater and manure in accordance with the schedule contained in paragraphs 5 through 8 below. The containment shall assure:

   a. That there is no discharge of manure or process wastewater from the production area provided, however, that pollutants in an overflow may be discharged whenever precipitation causes an overflow of manure or process wastewater from a structure that is designed and constructed, and can be maintained, to contain all manure and process wastewater including the runoff and direct precipitation from a 25-year, 24-hour rainfall event.

   b. That manure and process wastewater are not applied on the surface of the land in the winter when the ground is frozen and snow covered or when the soil is saturated. However, manure and process wastewater may be surface applied in winter when the ground is frozen and snow covered where the land is downslope

from waters of the United States, sinkholes, open tile line intake structures, and other conduits to waters of the United States.

c. In addition the containment shall include: (1) A volume to contain and store normal precipitation (less evaporation) on the surface of the structure during the periods contemplated in 4. b., above; (2) A volume to contain and store normal runoff, during the periods contemplated in section b of this paragraph, from the production area and any upslope areas the clean runoff from which is not diverted around the production area; (3) A volume to contain and store residuals that remain after liquids are removed from the structure; and (4) two feet of freeboard.

5. Designs and specifications that provide a volume for containment and storage that is less than 180 days shall be accompanied by a technical analysis which demonstrates that the lesser volume will assure compliance with paragraph 4 above.

6. Within ninety (90) days of receipt of this Order, the Dairy shall submit to U.S. EPA for review and approval, a plan, including design drawings, developed by a registered professional engineer, that will result in storage for process wastewater runoff from the production area with a capacity as described in paragraphs 4 and 5 above. The plan shall also be submitted to IDEM, and the Dairy must obtain any required state or local permits for construction of the storage facility.

7. Within sixty (60) days of obtaining approvals the Dairy shall start construction of the storage facility.

8. Within sixty (60) days of starting construction, the Dairy shall complete construction of the storage facilities.

9. Within five (5) days of receipt of this Order, the Dairy shall install and maintain

permanent markers on all manure and wastewater storage structures and at all times maintain a minimum of two feet of freeboard on all manure storage devices and ponds.

10. Within five (5) days of receipt of this Order, the Dairy shall conduct weekly inspections to insure compliance with this Order. Waste storage facilities shall be inspected for freeboard, discharge caused by overflow, broken pipe or equipment failure, and any leaks or seeps or erosion or damage caused by burrowing animals. Routine maintenance, including mowing of pond berms, shall be conducted in a manner to facilitate these inspections.

11. The Dairy shall maintain such records as necessary to demonstrate compliance with this Order for a term of at least five years, including the following:

    a. Freeboard inspections and waste storage pond inspections and maintenance reports and

    b. records of all fields upon which manure, wastewater, and other byproducts from the Dairy are land applied, including the amounts land applied, field identification reference, dates of application, size of each field applied to, rates of application and amounts of manure land applied, and weather and soil moisture conditions during application.

12. Within 120 days of receipt of this Order, the Dairy shall submit a Storm Water Pollution Prevention Plan (SWPPP) and a schedule for implementation of the SWPPP. The SWPPP shall be developed by a registered professional engineer and shall demonstrate how the dairy will divert clean water such as roof runoff from the production area without becoming contaminated. The SWPPP shall also address the stabilization of all disturbed areas between buildings and around manure handling activities in order to prevent erosive

discharges and include preventive maintenance, good housekeeping, and spill prevention and response practices and procedures to minimize the discharge of pollutants in storm water runoff from the following areas: immediate access roads used or traveled by carriers of raw materials, products, waste material, or by-products used or created by the CAFO; sites used for handling material other than manure and process wastewater; refuse site; sites used for the storage and maintenance of material handling equipment; and shipping and receiving areas.

13. Whenever the amount of freeboard in the Dairy's waste storage pits or lagoons is less than twenty-four (24) inches, the Dairy shall take immediate steps to reduce the volume. The Dairy shall notify IDEM and U.S. EPA, in writing at the addresses specified below that proper freeboard was not maintained and that corrective steps were taken within three (3) working days. Such notification shall include the specific storage facility affected, the amount of freeboard, and the corrective actions taken by the Dairy to maintain adequate freeboard.

14. The Dairy shall take all reasonable steps to prevent and minimize any discharge in violation of this Order or the CWA.

15. Within five (5) days of receipt of this Order, the Dairy shall post and ensure that all employees are fully aware of the proper procedures to effectively respond to any spill, or discharge to waters of the United States. The posted procedures shall contain detailed response instructions to include, but not be limited to, names of Dairy officials to be notified, State and Federal agencies to be notified, local or downstream public water supply and public health entities to be notified, appropriate phone numbers, addresses, safety precautions, and immediate actions to abate the occurrence.

16. Solid material including sludge, manure, or other pollutants accumulated in the waste control facilities shall be removed as necessary and disposed of or land applied in accordance with the requirements of this Order in a manner so as to prevent pollutants from being discharged to waters of the United States.

17. Land application of waste and wastewater shall not be undertaken when soil is saturated, frozen, covered with ice or snow, during precipitation, or when the National Weather Service predicts a 50 percent or more probability of a rain equal to or greater than the applicable quantity provided below within 24 hours of the conclusion of a planned land application event.

Hydrologic Soil Group	Quantity of Precipitation (inches)
A	1
B	0.56
C	0.25
D	0.25

The National Weather Service forecast may be viewed at http://www.nws.gov/mdl/synop/products.html. See Urban Hydrology for Small Watersheds, (United States Department of Agriculture, Natural Resources Conservation Service, 1986, Technical Release 55) for information on the Hydrologic Soil Groups within which a given soil is classified.

18. Land application practices shall be managed so as to avoid ponding or puddling of wastewater on the site and the occurrence of nuisance conditions such as odors and flies. Records of weather forecasts shall be maintained by the facility for each land application

event.

19. During and after each land application, the Dairy shall inspect the ditches, drains and field tile outlets tributary to the field, to insure that wastes are not being discharged. Detailed records shall be maintained for these inspections, including the date, time, inspector and whether any discharges were identified. If discharges are identified, appropriate action shall be taken to stop the discharge.

20. A schedule and procedures for lagoon or waste storage pond dewatering must be retained at the facility. A date log indicating weekly inspections of the wastewater level in any lagoon or waste storage pit shall be maintained and shall be signed by the person performing the inspection.

21. Where waste is to be transferred to another person by the Dairy, the Dairy shall maintain records of the transfer and provide the recipient with the current nutrient analysis. Records maintained pursuant to this section must also comply with the State of Indiana Regulations 327 IAC 15-15-15.

22. Within thirty (30) days of receipt of this Order, the Dairy shall develop, maintain, and implement an appropriate schedule for routine effective preventive maintenance. The maintenance log shall be signed by the owner/operator documenting that preventive maintenance has been accomplished.

    a. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices, separators, catch basins, storage ponds and tanks, as well as inspecting and testing facility equipment to uncover conditions that could cause breakdowns or failures which may result in the discharge of pollutants to waters of the United States.

b. The information sheet must contain, at a minimum, the following information:

1. The name and address of the CAFO providing the manure.

2. A statement indicating that it is unlawful to allow the manure, litter, and process wastewater to enter any waters of the state.

3. Information on the nutrient content of the manure, litter, and process wastewater, based on the most current analysis.

4. The manure, litter, and process wastewater application requirements of this rule.

23. The discharge of waste/wastewater from the Dairy to waters of the United States is not authorized by this Order and any such discharges may be subject to enforcement. If for any reason, there is a discharge of the Dairy's waste to waters of the United States, the owner/operator is required to visually monitor and immediately notify Region 5, U.S. EPA, Attention: Cheryl Burdett by fax at 312-886-0168 and IDEM's Emergency Response Spill Hotline at 1-800-888-233-7745. The Dairy shall document the following information and submit a report to U.S. EPA and IDEM within five (5) days of becoming aware of the discharge, including:

a. Description and cause of the discharge, including an estimate of the flow, discharge volume, and any analytical data;

b. The period of discharge, including exact begin and end dates and times and if not corrected, the anticipated time the discharge is expected to continue, and steps taken or to be taken to reduce, eliminate, and prevent the recurrence of the discharge;

c. If the discharge was caused by a precipitation event, information from an onsite rain gauge or the closest official National Weather Service weather station.

24. The Dairy shall submit all reports required by this Order to the Director, Water Division, Region 5, U.S. EPA, Attention: Cheryl Burdett, Water Enforcement Compliance Assurance Branch, (WC15-J), at 77 West Jackson Boulevard, Chicago, Illinois 60604, with copies to IDEM, Agricultural and Solid Waste Compliance Section, P.O. Box 6015, Indianapolis, Indiana, 46206-6015, Attention: Angie Lee.

GENERAL PROVISIONS

The written statements submitted pursuant to this Order must be notarized and returned under an authorized signature certifying that all statements contained therein are true and accurate to the best of the signatory's knowledge and belief. Any documents submitted to U.S. EPA pursuant to this Order should be certified as authentic to the best of the signatory's knowledge and belief.

Should the signatory find at any time after submittal of the requested information that any portion of its response is false or incorrect, the signatory shall notify U.S. EPA Region 5 immediately. (See attached Authority and Confidentiality Provisions, Attachment B). If any portion of the response certified as true is found to be false, the signatory can be prosecuted under 18 U.S.C. § 1001. The U.S. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action.

The information required to be maintained or submitted pursuant to this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq. Neither the issuance of this Order by the U.S. EPA nor compliance with its terms affects the Dairy's ongoing obligation to comply with the CWA or any other Federal or State law or regulation, nor does it preclude further enforcement action pursuant to 33 U.S.C. § 1319 for the violations cited herein or any other violations committed by the Dairy.

Neither the issuance of this Order by the U.S. EPA, nor compliance with this Order by the

Dairy, shall be deemed to relieve the Dairy of liability for any penalty, remedy, or sanction authorized to be imposed pursuant to Section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), or (g), for any violation of applicable requirements of the CWA. U.S. EPA specifically reserves the right to seek any or all of the remedies authorized under these provisions for each and every violation specified in this Order. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, U.S. EPA may assess civil administrative penalties of eleven thousand dollars ($11,000) per day of violation, up to a maximum of one hundred thirty seven thousand five hundred dollars ($137,500) under 33 U.S.C. § 1319(g), or seek civil judicial penalties of $27,500 per day of violation and civil injunctive relief for violations of the CWA under 33 U.S.C. § 1319(b). Furthermore, U.S. EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

IT IS HEREBY ORDERED:

BY: Sally K Swann
for Jo Lynn Traub
Director, Water Division
U.S. EPA, Region 5

Sept. 21, 2004
Date

ATTACHMENT A

REQUEST FOR INFORMATION PURSUANT TO SECTION 308 OF THE CWA

MILCO DAIRY

Instructions

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.

2. Precede each answer with the number of the Question to which it corresponds.

3. If a Question asks for a date or a figure (e.g. dollar amount, volumetric capacity, etc.), you should provide a good faith estimate in the event that you cannot recall the exact date or figure.

4. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide EPA with a corrected response.

5. The information requested herein must be provided even though it includes information that you may consider to be confidential or a trade secret. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 308(b) of the CWA, 33 U.S.C. § 1318(b), by attaching to such information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means of the procedures set forth in 40 CFR § 2. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above cited regulations carefully before asserting a business confidentially claim, since certain categories of information are not properly the subject of such a claim.

Definitions

The following definitions shall apply to the following words as they appear in this Request for Information:

1. The term "**agreement**" shall mean any written document (e.g. contract, lease, memorandum of understanding, agreement in principle, letter etc.) or verbal exchange manifesting mutual assent on the part of two or more persons. If you are asked to "produce" the agreement, you must produce the agreement along with all

exhibits and attachments to the agreement.

2. The term "**correspondence**" shall mean any interchange of written communications, including (but not limited to) electronic mail ("e-mail"), facsimiles, or letters, as well as any and all attachments and enclosures.

3. The term "**Dairy**" shall mean Milco Dairy, LLC, which is located at (b) (6) [redacted], and shall include all land owned, leased or used by the dairy for the purpose of raising crops, disposing of manure (or other wastes), maintaining cattle (including calves, heifers, dry cows, and milking cows) or performing other operational activities.

4. The terms "**document**" and "**documents**" shall mean writings of any kind, whether or not wholly or partially in handwriting, including (but not limited to) correspondence, record books, minutes, memorandum of telephone and other conversations, agreements, notebooks, forms, pamphlets, telegrams, telexes, e-mails, reports, and interoffice or intraoffice communications.

5. The term "**identify**" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

6. The term "**identify**" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, and a brief description of its business.

7. The term "**identify**" means, with respect to a document, to identify the document custodian and give a detailed description of the document by listing its title (or its customary business description), its approximate date, and its substance or subject matter. If responsive documents have been destroyed or otherwise disposed of, identify the following information with regard to each such document;

   a. the date that the document was destroyed or disposed;

   b. the person who destroyed or disposed of the document, and

   c. the reason that the document was destroyed or disposed.

8. The term "**produce**" means to provide a true and accurate copy of the document to EPA. Each document should be assigned a reference number, and you should provide this reference number in response to questions that ask you to produce the document. If a document is not presently in your possession, then identify the

document as described above in paragraph 7.

9. The terms "**or**" and "**and**" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

10. The term "**Vreba-Hoff**" shall mean any of the following persons or business entities, either individually or collectively:

A. Vreba-Hoff Dairy Development LLC
1290 N. Shoop Ave. Suite 140
Wauseon, Ohio 43567

B. Vreba-Hoff Dairy Development LLC
100 West Chicago Street
Coldwater, Michigan

C. Van Bakel Onroerend Goed B.V.
Vredeweg 6
5816 AK Vredepeel
The Netherlands

D. Agrotransfer
De Drieslag 3
8251 JZ Dronten
The Netherlands

E. Vreba-Hoff Dairy Leasing, LLC
189 West Colon Road
Coldwater, Michigan 49036

F. Vreba-Hoff Dairy Leasing, LLC
1290 N Shoop Ave
Wauseon, OH 43567

G. Vreba-Hoff Holdings, LLC
1290 N. Shoop Ave.
Wauseon, OH 43567

H. Vander-Hoff Funding, Inc.

I. Vander-Hoff Dairy Management, LLC

J. Marion Environmental Preserve, LLC

K. Vander Hoff Bros. Dairy, LLC
7601 Dillon Highway
Hudson, MI 49247

L. Vander Hoff Bros. Dairy, LLC
1216 Grove Rd
Reading, MI 49274-9531

M. Vreba-Hoff Dairy Farm
8502 S. Meridian Road
Hudson, MI 49247

N. Vreba-Hoff Dairy Farm
7602 Dillon Highway
Hudson, MI 49247.

O. Any parent, owner, subsidiary, shareholder, partner or affiliate of one or more of the business entities listed above in sub-paragraphs A though N.

P. Any employee, officer or contractor of one or more of the entities covered by subparagraphs A through N.

11. The word "**wastewater**" means (1) storm water that comes in contact with feed or manure within the production area, or (2) process water that is discharged from milk coolers, the milk parlor, and other sections of the production area.

12. The word "**you**" means the person who is the addressee of this Information Request, as well as family members and employees of the addressee.

13. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the CWA, 33 U.S.C. § 1362. or its regulations found at 40 CFR § 122 or 40 CFR § 412 respectively, in which case the statutory or regulatory definitions shall apply.

QUESTIONS

I. Agreements with Vreba-Hoff

1) Did you or the Dairy enter into an agreement to purchase a dairy operation from Vreba-Hoff? If so, produce each such agreement. Please also answer the following questions for each agreement:

a. Did the agreement require Vreba-Hoff to build a facility that was compliant with the requirements of the Clean Water Act? Please explain.

b. Did the agreement require Vreba-Hoff to build any manure storage devices (e.g. lagoons, pits, or tanks) or any devices for capturing and storing wastewater? If so, answer the following questions with respect to each such device:

i. What were the specifications for each such manure storage device, including its volumetric capacity?

ii. Who prepared the specifications?

iii. What were the assumptions used in preparing the specifications?

iv. Did you review and approve the specifications before construction began?

v. Did you make any changes to the specifications before construction began?

vi. Did Vreba-Hoff make any representations about the adequacy of the specifications in terms of compliance with environmental laws and regulations? If yes, describe each such representation by identifying the speaker and describing the substance and circumstances of the communication.

vii. Did you make any modifications to the device after its construction? If so, please describe the modifications and when they occurred.

2) Did you or the Dairy enter into an agreement with Vreba-Hoff to lease land or buildings for a dairy operation? If so, produce each such agreement. Please also answer the following questions for each agreement:

a. Did the lease include manure storage devices (e.g. pits, lagoons, etc) or devices for capturing and storing wastewater? If so, please answer the same questions as those in paragraphs 1b.i to 1.b.vii above.

b. When did the lease begin?

c. When did the lease end?

d. Did you or the Dairy make any changes, modifications or improvements to the property during the lease period? If so, please describe the modifications and the date that they occurred.

3) Did you or the Dairy purchase or lease cattle directly from Vreba-Hoff? If so,

produce each such agreement.

4) Did you or the Dairy enter into any agreement with Vreba-Hoff under which you or the Dairy are required to purchase milking equipment or dairy operation supplies from a third-party, including (but not limited to) Westfalia-Surge? If so, produce each such agreement and identify the parties who entered into the agreement. Please also answer the following questions for each agreement:

   a. Did Vreba-Hoff explain the purpose of the agreement? If so, please identify the person who gave you this explanation and describe the substance and circumstances of the communication. If the explanation was in writing, please produce all documents relating to the issue.

   b. Did Vreba-Hoff explain what actions it would take if you or the Dairy refused to enter into this agreement or breached the agreement? If so, please identify the person who gave you this explanation and describe the substance and circumstances of the communication. If the explanation was in writing, please produce all documents relating to the issue.

   c. Did Vreba-Hoff ever contend that you or the Dairy breached the agreement? If so, did Vreba-Hoff take any actions because of the alleged breach? Please describe each such action and produce all documents relating to the issue.

   d. Did you or the Dairy enter into an exclusive purchase agreement with the third-party? If so, please produce this document.

5) Have you or the Dairy received a loan from Vebra-Hoff for any purpose, including but not limited to purchasing land, buildings, equipment, supplies or cattle. If so, produce each loan agreement.

6) Did you or the Dairy enter into any agreements with Vreba-Hoff that are not covered by your responses to the questions above. If so, please identify each such agreement and the parties to the agreement.

II. <u>Transfer of Dairy from Vreba-Hoff</u>

1) Did you receive any training from Vreba-Hoff before you began milking operations at the Dairy? If so, please describe the type of training, the dates of the training, the frequency of the training, and where the training took place.

2) What was the date when construction of the Dairy was complete?

3) What was the date when you took residence at the Dairy?

4) What was the date that you commenced milking operations at the Dairy?

5) What was the start date when cattle were maintained in freestalls at the Dairy? What was the number of cattle at the Dairy on that date?

6) Did any person conduct milking operations at the Dairy before you took residence or before you were ready to assume control of milking operations? If so, identify the persons (or entities) that operated the Dairy and the dates during which they conducted operations.

7) When did you take title to the property on which the Dairy's production area is located? (If you do not have title to the property, identify the person or business that holds title.)

8) When did you take title to the buildings and other structures that are used in the operation of the Dairy? (If you do not have title to one or more buildings or structures, identify the building and structures and the person or business who holds title to each.)

III. Vreba-Hoff's Participation in Operation of Dairy

1) Have you received advice or assistance from Vreba-Hoff with respect to herd management? If so, identify each person who provided such advice and guidance and answer the following questions with respect to each such person:

   a. What was the advice and assistance that you received?

   b. What would be the repercussions (if any) if you rejected Vreba-Hoff's advice or assistance?

2) Have you or the Dairy received advice or assistance from Vreba-Hoff with respect to the marketing of milk and other products? If so, identify each person who provided such advice and assistance and answer the following questions with respect to each such person:

   a. What was the advice and assistance that you received?

   b. What would be the repercussions (if any) if you rejected Vreba-Hoff's advice or assistance?

3) Does Vreba-Hoff receive payments or share revenue in connection with respect to the marketing of milk and other products by the Dairy? Please explain.

4) Have you or the Dairy received advice or assistance from Vreba-Hoff with respect

to manure management and other environmental controls? If so, identify each person who provided such advice and assistance and answer the following questions with respect to each such person:

a. What was the advice and assistance that you received?

b. What would be the repercussions (if any) if you rejected Vreba-Hoff's advice or assistance?

5) Did Vreba-Hoff submit an application to a state agency for approval to build a confined feeding operation on the site where the Dairy is now located? If so, please produce this application and all correspondence relating to the application. Please also identify each person who participated in the preparation of the application and answer the following questions:

a. Did you review the application before it was submitted? If so, please describe the actions that you took in reviewing the application.

b. Did the state agency issue a permit to Vreba-Hoff? If so, please produce a copy of the permit and any related correspondence.

c. Has the state approved the transfer of the permit from Vreba-Hoff to the Dairy? If so, when did the state approve the transfer? Please also produce all documents relating to the transfer.

6) Has Vreba-Hoff provided assistance with respect to other permits necessary for the operation of the Dairy? If so, please produce all documents and correspondence relating to this assistance and identify each person who provided such assistance.

7) Has Vreba-Hoff prepared any plans, procedures, or manuals that the Dairy uses with respect to environmental controls (e.g., manure management plan, spill prevention plan, etc.)? If so, identify each such plan, procedure, or manual and answer the following questions?

a. Does the Dairy use or rely on the plan, procedure, or manual? If so, how?

b. Has the Dairy made any modifications to the plan, procedure or manual? If so, please describe each modification.

c. What would be the repercussions (if any) if you refused to use Vreba-Hoff's plan, procedure or manual?

8) Has Vreba-Hoff provided instruction and guidance with respect to environmental monitoring activities conducted by citizen groups? If so, produce all documents

and correspondence relating to this instruction and guidance and identify each person provided this instruction and guidance. Please also answer the following questions.

a. What was the substance of the guidance and instruction?

b. What would be the repercussions (if any) if you rejected Vreba-Hoff's instruction or guidance.

9) Has Vreba-Hoff provided instruction and guidance with respect to inspections by state agencies and EPA? If so, produce all documents and correspondence relating to this instruction and guidance and identify each person provided this instruction and guidance. Please also answer the following questions.

a. What was the substance of the guidance and instruction?

b. What would be the repercussions (if any) if you rejected Vreba-Hoff's instruction or guidance.

10) Does Vreba-Hoff maintain any operational control over the Dairy that you have not discussed above? If so, please explain.

11) Did you consult with Vreba-Hoff in responding to this information request? If so, identify each person at Vreba-Hoff with whom you consulted and, for each such person, identify the number of each question listed above on which he or she was consulted.

Attachment B

AUTHORITY AND CONFIDENTIALITY PROVISIONS

Authority

Information requests are made under authority provided by Section 308 of the Clean Water Act, 33 U.S.C. § 1318. Section 308 provides that: "Whenever required to carry out the objectives of this Act, ...the Administrator shall require the owner or operator of any point sources to (I) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment and methods (including where appropriate, biological monitoring methods), (iv) sample such effluent... and (v) provide such other information as he may reasonably require; and the Administrator or his authorized representative, upon presentation of his credentials, shall have a right of entry to... any premises in which an effluent source is located or in which any records... are located, and may at reasonable times have access to and copy any records... and sample any effluents..."

Please be advised that the submission of false statements is subject to federal prosecution under 18 U.S.C. § 1001 and that this or any other failure to comply with the requirements of Section 308 as requested by U.S. EPA may result in enforcement action under the authority of Section 309 of the Clean Water Act, which provides for specified civil and/or criminal penalties.

Confidentiality

U.S. EPA regulations concerning confidentiality and treatment of business information are contained in 40 CFR Part 2, Subpart B. Information may not be withheld from the Administrator or his authorized representative because it is viewed as confidential. However, when requested to do so, the Administrator is required to consider information to be confidential and to treat it accordingly, if disclosure would divulge methods or processes entitled to protection as trade secrets (33 U.S.C. § 1318(b) and 18 U.S.C. § 1905), except that effluent data (as defined in 40 CFR § 2.302(a)(2)) many not be considered by U.S. EPA as confidential.

The regulations provide that one may assert a business confidentiality claim covering part or all of any trade secret information furnished to U.S. EPA at the time such information is provided to the Agency. The manner of asserting such claims is specified in 40 CFR 2.203(b). In the event that a request is made for release of information covered by such claim of confidentiality or the Agency otherwise decides to make a determination as to whether or not such information is entitled to such confidential treatment, notice will be provided to the claimant prior to any release of the information. However, if no claim of confidentiality is made when information is furnished to U.S. EPA, any information submitted to the Agency may be made available to the public without prior notice.

Note: This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

Vreba-Hoff Dairy Development Inspection:

CONCENTRATED ANIMAL FEEDING OPERATION INSPECTION

I. GENERAL INFORMATION		*Date*	12/10/2003
Inspector's Name		*Arrival Time*	9:15 am
Jesse Salter, SAIC Randy Jones, IDEM		*Departure Time*	12:00 pm
Facility Name	Milco Dairy	*Owner/Operator Name*	Nico Niessen
Facility Location	(b) (6) [redacted]	*Owner/Operator Address*	Same

Name and position of individual to whom credentials presented

Nico Niessen, owner
Also present were:
Paul Gordon, Independent Soil & Crop Consultant, Gordon & Associates, Bentonville, IN
Julie French, Environmental Coordinator, Gordon & Associates, Bentonville, IN
Clay Miller, Attorney, Boston Bever Klinge Cross & Chidester, Richmond, IN (did not stay for facility tour)

Weather conditions immediately prior to and during the inspection

Rainy, about 50°F.

II. FACILITY OPERATION INFORMATION

1. How many mature dairy cattle, calves, heifers are maintained ?

1,200 total cows
Calves are kept about 3 days, with 5 to 10 on site at a time on average.

2. How many times a day are the cows milked?

3 times per day.

3. What type of bedding is used at the facility?

Sand, some straw used for maternity pens

4. What is the size of the production area?

Approximately 1,000 feet by 1,000 feet

5. Is the facility located near a surface water? (if so, provide proximity of surface water)

A waterway is about one quarter mile east of the dairy.

6. Do the animals enter or cross surface water (e.g., rivers, streams, canals) on a regular basis?

No

7. Does the farmer crop or rely on others for crop production? Describe the relationship or practice.

The dairy farmer has a mixture of his own land and agreements with crop farmers.

8. How much land is owned/under the control of the farm for land application?

The dairy farmer owns 500 acres and rents an additional 50 acres. Agreements with crop farmers cover an additional 420 acres.

III. WASTE HANDLING, TREATMENT, AND/OR MANAGEMENT OPERATIONS

1. Describe types of confinement (i.e., free stall barns, sheltered or limited shelter dirt lots, paved or dirt open lots, swine houses, etc.)

There is one freestall barn and a smaller barn (with dry and fresh cows and a maternity area) attached to the milking parlor.

2. ***Describe the types of waste handling used (i.e., direct spreading in solid form, slotted floor with lagoon or pit, single or multi-cell lagoon, aerated lagoon, land application of liquid manure, spray irrigation, contractor disposal, etc.)***

The freestall barn has automatic scrapers to collect manure and push it to a central flush channel (Photo 2). The dry cow barn is scraped with a skid steer loader to the flush channel. Recycled lagoon water is used to flush the waste into the concrete pit. Liquid from the pit overflows into the lagoon. There is a sand cleaning area that is not yet in operation. The dairy conducts land application with its own equipment when the field is near the dairy. If the site is a few miles away or more, the dairy hires a contract applicator. Liquid application methods include drag hose and injection. A box spreader is used for solids.

3. ***If there is a waste storage lagoon, give capacity and state how the dimensions were obtained (i.e., measured, estimated, information from operator)***

As built, the concrete pit has a 64,000 cubic foot capacity, while the lagoon has a 528,000 cubic foot capacity. On the day of the inspection, the concrete pit had approximately 3 feet of freeboard. The lagoon level was approximately 9 inches below the marking for the maximum level, which is 2 feet below the top of the berm. Note that storm water can enter the passageway between the barns and flow to the pit/lagoon system (Photo 4). Parts of the inner lagoon berm are weedy (Photo 8, northeast corner). There is erosion around the point where the tanker fill pipe is used (Photo 9).

4. ***Is there a nutrient management plan (i.e., land application records) kept on site?***

The owner keeps land application records, including the amount, time, date, and field land applied, the total nitrogen and Plant Available Nitrogen (PAN) applied, and manure analyses. The owner has soil tests for his own fields. Land application is governed by nitrogen loading; the facility tracks phosphorus loading, although this is not required. The owner plans to develop a CNMP within one year.

5. ***Can pollutants from the disposal of wastes and waste waters enter a surface water, dry bed, ditch, canal, etc.? If yes, name or describe and identify how the discharge may occur.***

Materials are stored in a room in the milking parlor that has a floor drain. Teat dip was spilled on the floor (Photo 1). Manure was pushed out of a doorway on the east end of the dry cow barn (Photo 3).

IV. Vreba-Hoff Dairy Development:
1. How did the owner first become aware of Vreba-Hoff Dairy Development?
The owner visited a Belgian farm in Michigan. He also knew a relative in the Netherlands.
2. What promises were made by Vreba-Hoff Dairy Development regarding environmental permitting?
The contract said Vreba-Hoff would get environmental permits. The owner said that they did get those permits.
3. When did the Dairy enter into a contract with Vreba-Hoff Dairy Development? Ask for copies of the contracts with Vreba-Hoff Diary Development.
February 1999
4. When did the dairy owner gain title to the dairy?
The owner bought the facility as a turnkey operation and started milking in October 2002.
5. What if any changes or additions have been made? (Draw them in on the facility drawings)
The silage leachate runoff went into a pond because Vreba-Hoff's contractor did not install a storage tank as required. There was also a design discrepancy in the sand pit; it was not built to plan. Kickout supports had to be added to the wall to strengthen it.
6. Does the owner have a map or drawing showing the complete facility including feed storage area, etc. (Obtain a copy)
The owner sketched the attached map from one in the facility's files.

V. NPDES Storm Water Construction:
1. When did construction actually start on the dairy?
November 1999
2. When was construction complete at the dairy?
October 2002
3. When were the buildings first occupied?
October 2002
4. Was an NPDES permit for erosion control during construction obtained prior to construction? If yes, obtain a copy.
The owner was not aware of such a permit.
5. Does the owner have copies of the required pollution prevention plan? If so obtain a copy.
No
6. Does the owner have a copy of the inspection records demonstrating compliance with the pollution prevention plan? If so obtain a copy.
No
VI. Potential Discharge Sources:
1. Where is the septic system for human waste located? Check the location for potential for storm drain contamination between buildings.
There is currently no septic system leach field. The owner has the septic tank pumped out periodically.
2. How does the facility handle cooling water from the milk coolers?
Plate cooler water goes to a surge tank and is used for cow drinking water. The overflow from the surge tank goes to the lagoon.
3. Does the facility have heated waterers or overflow waterers? If overflow, where does this go? Check for connection to storm drains.
The facility has overflow waterers. The owner believes the overflow goes to the lagoon.

4. How is runoff and leachate from feed and silage storage areas contained? Are feed and silage stored on concrete, dirt, or some other surface?

Silage is stored on a concrete pad. Drains in the concrete area lead to the silage leachate holding tanks south of the commodity barn (Photo 7). The tank system is designed so higher flows, such as from storm events, bypass the tanks and flow into a field to the east that serves as a filter strip. The outfall for this bypass was discharging during the inspection (Photo 10). The pad has curbing around the southeast corner, but curbs along the east side at the edge of the silage piles have not yet been constructed. Sand bags are currently in place at the foot of the piles (Photo 6). Water running through the sand bags on the day of the inspection was clear. Several areas of grass to the east and north of the silage pad had turned dark brown. The largest of these was approximately 125 feet by 40 feet. These areas continued close to a drainageway northeast of the silage pad.

VII. DISCHARGE INFORMATION

If there is evidence of a discharge or a discharge was observed, obtain answers to the following questions and indicate how the information was obtained. Also, take a sample from the source of the discharge and take photographs of the discharges or evidence of the discharge.

		Yes	No
1.	***Did the discharge occur through or because of a man-made ditch, flushing system or similar man-made device (i.e., man-made shaping or grading or man-made alteration to property, trough)? Explain how and why the discharge occurred.***		

Silage leachate and storm water runs off the edge of the silage pad, and in some areas flows towards a drainageway northeast of the pad.

2. List any other discharges which have occurred at the facility and describe how and why the discharges occurred (e.g., failure of manure storage structure, 25-year, 24 hour storm)

At an earlier date, silage leachate ran out of the silage area, but did not flow to waters of the State. There was no water quality violation.

3. Provide the type (ditch, canal, stream, river, dry bed) and name of the water body receiving the discharge.

Drainageway northeast of the dairy.

4. What is the 25-year, 24 hour rainfall amount for this location?

Approximately 4.5 inches.

5. Describe where the surface water originates and where it flows once it has received a discharge.
The drainageway flows east off of the dairy property.
VIII. FACILITY DIAGRAM
Attach a sketch of the facility layout, including pertinent information such as surface water, discharge location, buildings, fencing.

The attached map was sketched by the owner from a map in the facility's files. The inspection team added annotations.

IX. MANURE GENERATION

Manure Generation:

1.3 ft^3/day/1000#s[1]x Number of cows = 1,560 ft^3/day
1,560 ft^3/day x 7.36 gal/ft^3 = 11,482 gal/day
11,482 gal/day x 365 days/year = 4,190,930 gal/year
Adjustment for cattle size: the milking cattle are all mature Holsteins with an average weight of 1200 #s 1.2 x 4,190,930 gal/year = 5,029,116 gal/year

Milk Parlor Waste:

1.4 ft^3/day/cow[2]
1.4 ft^3/day x Number of cows = 1,680 ft^3/day
1,680 ft^3/day x 365 days/year = 613,200 ft^3/year
613,200 ft^3/year x 7.36 gal/ft^3 = 4,513,152 gal/year

Total waste, not including bedding (cows + milk parlor) = 9,542,268 gal/year

Additional Waste Streams:

Bedding not estimated.

[1]Agricultural Waste Management Field Handbook, NRCS, p 4-8

[2] Agricultural Waste Management Field Handbook, NRCS, p 4-9

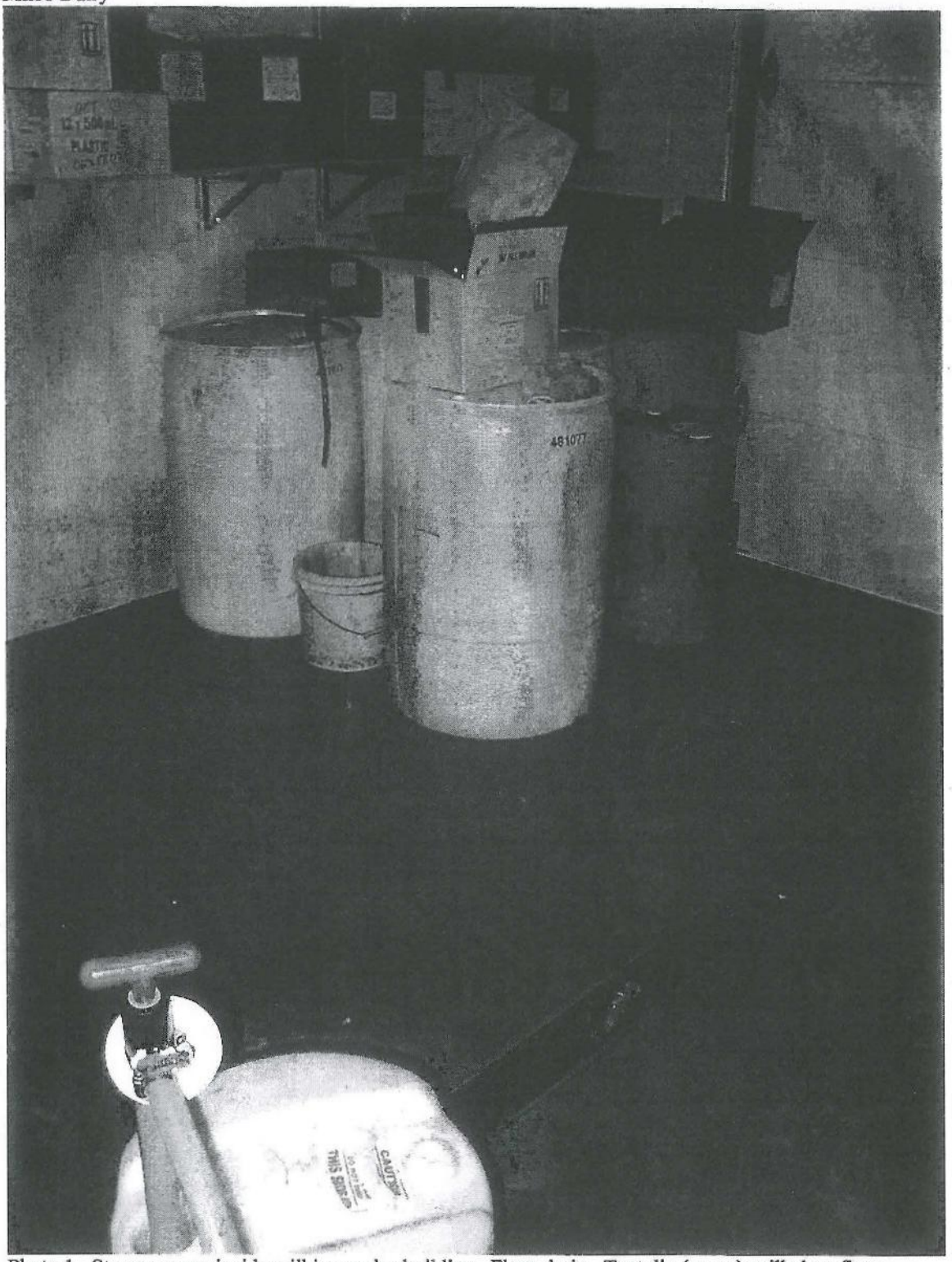


Photo 1. Storage room inside milking parlor building. Floor drain. Teat dip (green) spilled on floor.

Photo 2. Flush channel inside freestall barn.

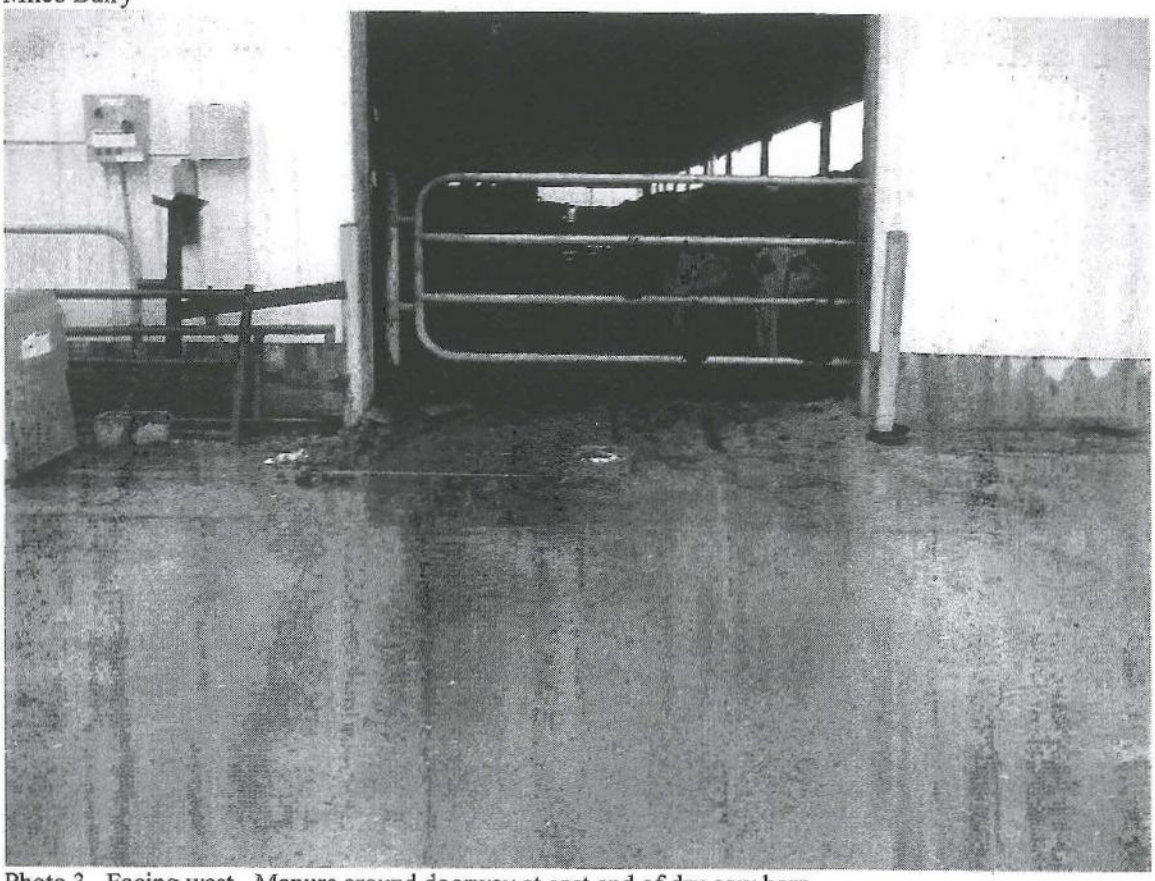


Photo 3. Facing west. Manure around doorway at east end of dry cow barn.

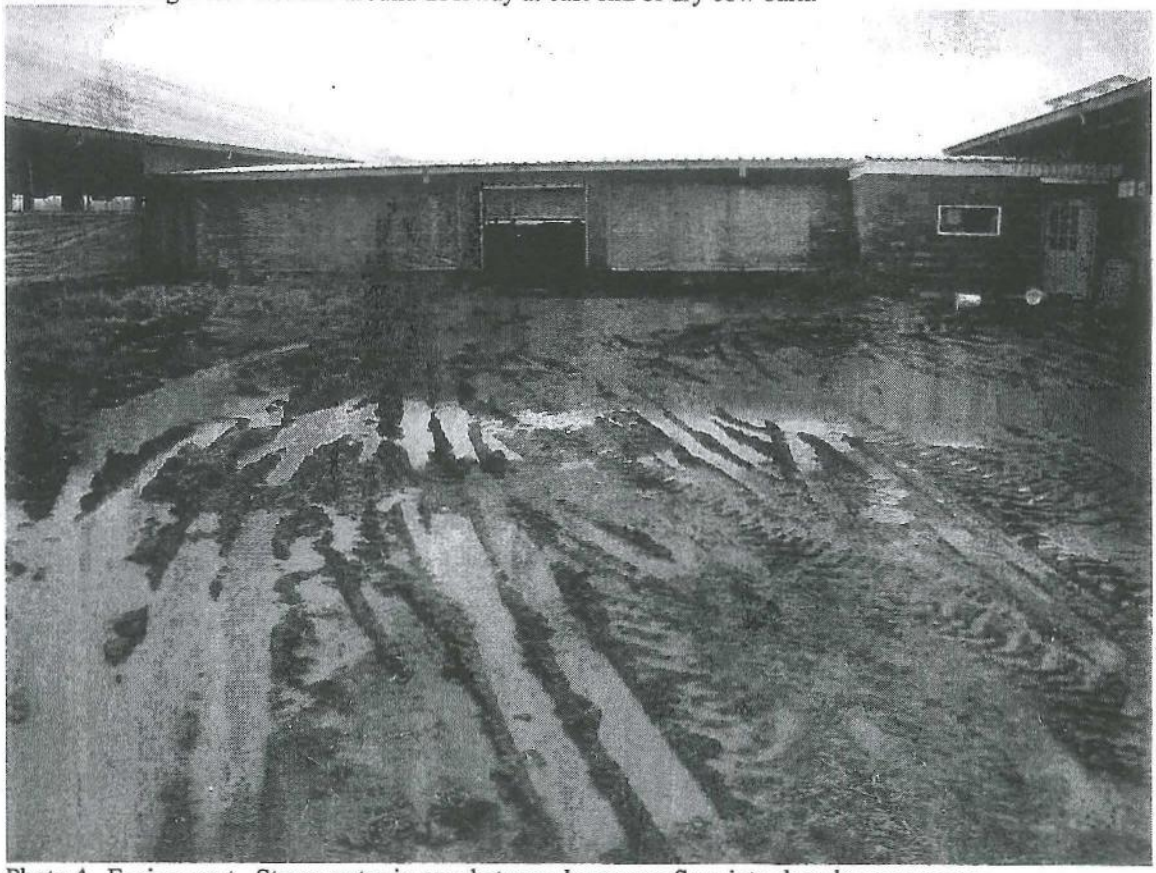


Photo 4. Facing west. Storm water in area between barns can flow into door in passageway.

Photo 5. Facing northeast. Drain in concrete area near silage storage pad.

Photo 6. Facing north. East side of silage piles have sandbags at bottom edge. Leachate observed in grass. Some grass areas have turned dark brown.

Photo 7. Facing east. Concrete covers for silage leachate tanks (center).

Photo 8. Facing north at northeast corner of lagoon. Weeds.

Photo 9. Northeast corner of lagoon. Blue pipe is influent from silage leachate tanks. Red is land application tanker fill pipe. Note erosion around end of red pipe.

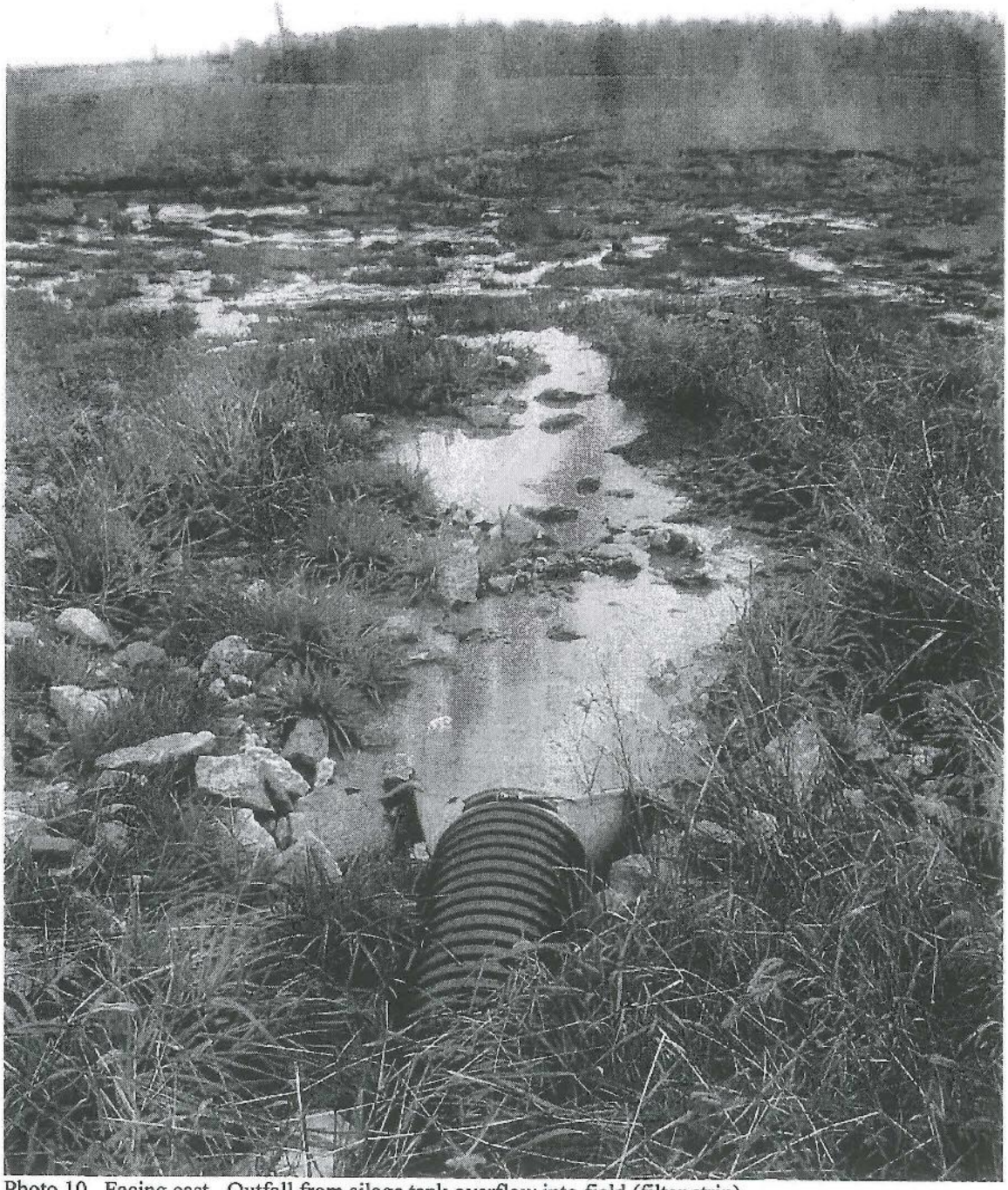
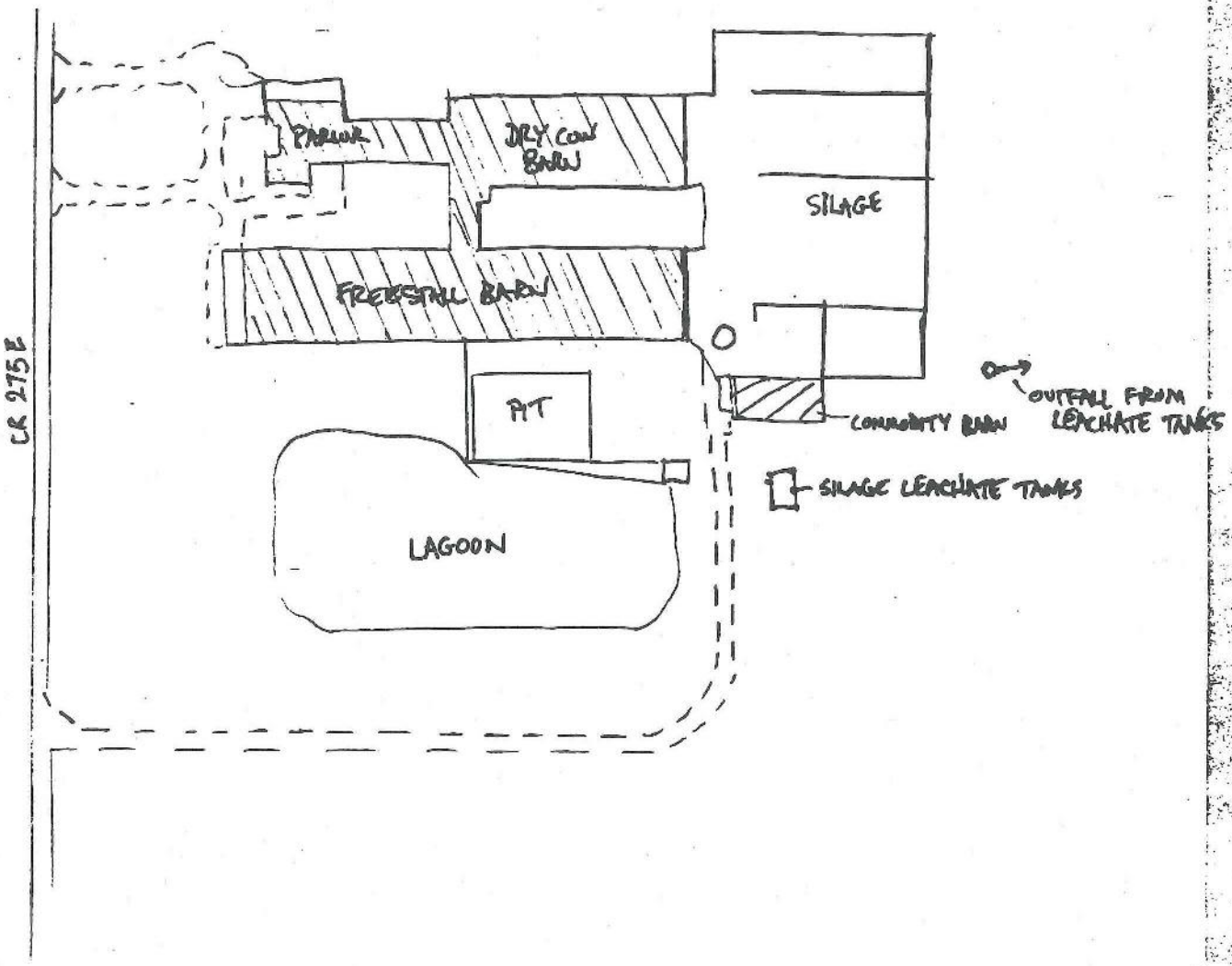


Photo 10. Facing east. Outfall from silage tank overflow into field (filter strip).

North.

1" = 200'


PARLOR
DRY COW BARN
SILAGE
FREESTALL BARN
PIT
LAGOON
CR 275E
COMMODITY BARN
OUTFALL FROM LEACHATE TANKS
SILAGE LEACHATE TANKS